

FILED
U.S. DISTRICT COURTIN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION
DISTRICT OF UTAHBY: _____
DEPUTY CLERK

KIRK IRVING KOSKELLA

Petitioner,

vs.

UNITED STATES OF AMERICA

Defendant.

ORDER

Case No. 2:07-CV-270
(Criminal Case No: 2:00-CR-594)

Judge Dee Benson

The Tenth Circuit in its Order dated June 28, 2007 remanded Petitioner's first claim involving alleged "prosecutorial misconduct and judicial interference in connection with an alleged theft of legal papers from [Petitioner's] prison cell" for this Court to determine in the first instance (Doc. 9). The Tenth Circuit stated in note 2 that this Court "may have ruled on, and dismissed, [Petitioner's] claim related to the theft of his legal papers." Indeed, this Court in its Order dated April 24, 2007 filed in the related criminal case No. 2:00-CR-594 dismissed Petitioner's motion titled "Judicial Notice of Malfeasance, Denial of Access to Courts, Theft, Withholding Legal Papers, Copies, Legal Materials and Motion for Emergency Relief," which related to the theft of his legal papers (Doc. 210). The Court construed Petitioner's earlier motion as challenging or seeking to otherwise modify the execution of his federal sentence under 28 U.S.C. § 2241 rather than challenging the validity of his sentence under 28 U.S.C. § 2255. Accordingly, the Court dismissed the motion, without prejudice, for lack of jurisdiction since

Petitioner is not serving his sentence in Utah. Due to the Court's previous ruling, the matter is resolved.

In light of the denial of Petitioner's underlying claim, Petitioner's six pending motions are DENIED. Dated July 9, 2007, Petitioner filed the following five motions: Motion For Issuance of Subpoenas and Appointment of Technical Counsel (Doc. 12); Motion for Order to Show Cause - Withholding of Discovery to Assure Guilty Plea (Doc. 13); Motion for Order to Show Cause - Dismissal For Time Prejudice (Doc. 14); Motion for Order to Show Cause - Denial of Notice/Counsel and Attendance at Resentencing (Doc. 15); and Motion for Order to Show Cause - to Empanel a Grand Jury (Doc. 16). Dated August 20, 2007, Petitioner filed a Motion for Summary Judgment (Doc. 24).

Furthermore, the Court reminds Petitioner that in accordance with his plea agreement, the Court will no longer entertain motions from Petitioner that collaterally attack his plea or sentence, whether filed under 28 U.S.C. § 2255 or otherwise, unless directed to do so by the United States Court of Appeals for the Tenth Circuit.

IT IS SO ORDERED.

DATED this 19th day of November 2007.

A handwritten signature in black ink, reading "Dee Benson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Dee Benson
United States District Judge